Case 1:04-cv-01542-GMS Document 104-Filed 06/15/2007 Page 1 of 28 DISTRICT OF DELAWARE

KEVIN C. BRATHWAITE

<u>Y</u>-...

IC.A. #04-1542 -G.M.S. IJURY TRIAL DEMANDED

MARCEllo Rispoli et-All
defendants



MOTION TO OPPOSE SUMMARY Judgement And Proceed to Trial

This Plaintiff opposes these defendants Motion for Summary judgement, And request that this Matter be scheduled for trial.

To Support this Motion, this PHAINTIFF OFFERS the Following:

1. Through the testimony of the

Numerous Correctional officers

that witnessed these incidents,

this Plaintiff CAN prove that

he was physically beaten and

ASSAULTED with A dangerous

Weapon.

2. ON February, 28 2007, this Plaintiff was ordered to give A deposition to the defendants Attorney. During this deposition, this Plaintiff gave Attorney, ophelin Waters, A list of NAMES OF the MANY correctional officers that has Already Said that they Will Not he For ANYONE, AND Will testify to the exact details of the ASSAULT that took place on october, 9th 2004. Ms. Waters office interviewed these officers and Chose Not to take AFFIDAVITS From. the officers that witnessed this brutal assault. And the only reason AFFICIAVITS Were NOT TAKEN From these officers that witnessed this assault is because these officers told the truth about

What they SAW. These officers
KNOW About the penalties of perjury.

ONE OF these witnesses with

told A lieutenant, ("I'm not lying
For Nobody, IF they would send

Lik Kim to jail For Lying in Court,

they'll probably throw the book At

Me!")

3. WALLACE AND STEVENSON - ASSAULT:

ON october, 9th, 2004 these defendants claim that a razor Fell From this PlAINTIFFS UNDERWEAR. This is a blatant lie. Witness testimony Will Clearly prove that razors are given out to every INMATE ON SATURDAYS AND TUESDAYS between 8:00 A.M. AND 8:30 A.M. AND WITNESS testimony Will Also prove that this plaintiff was Shaving just seconds before this ASSAULT took place. But in these defendants report, they tried to Make it sound like the plaintiff had A Weapon. The entire Statement that defendants Wallace And Stevenson gave is A complete lie in Attempts

to Cover-up their wrong doing. According to defendant WAllace's AFFIDAVIF, defendants Exhibit - A-3, he claims in paragraph-7, that he NOT ANYONE else present, Kicked plaintiff in the back of his head or stomped on his back. But he conveniently left the NAME of c/o Greg Turner, out of his AFFIDAVIT AND his initiAl report, defendants Exhibit - A-4. Because he KNEW that co Turner did Not Approve of what had taken place, And he KNEW that CO TURNER Would Not lie For him, Where As, IN defendant Stevensons AFFI davit defendants Exhibit, B-1, paragraph-3 AND his initial report, defendants, Exhibit - B-3, he clearly Mentions c/o Turner AS one of the officers ON the Scene of this ASSAULT. All officers on the Scene of Any incident is required to Submitt A Full report of What they SAW. The Attorney generals OFFICE is Folly AWARE OF this FACT, but Conveniently chose Not to use the reports of ANY of

the other 10-12 officers that Were ON the Scene. The officers that witnessed this assault take place must be given the opportunity to testify As to what they SAW TAKE Place. AND ANYONE Who chooses to perjure themselves must be held Accountable. SGT. WALLACE, has A history of ASSAUlting inmates While they are Shackled AND handcuffed. See Attached Exhibits A-B-C-AND- AND he has been proven to be unreliable And Not credible in other court cases See, STATE V.S. LUCAS, SUP. CT (204) IN The defendants Exhibit, I-1, they MAKE AN Attempt to Manipulate the court. The exhibit they present only shows the First page of the Medical report AND leaves out the written details in it's entirety. The defendants Also Jaim that this plaintiff Suffered No injuries. The real fact is that this Plaintiff Suffered Numerous injuries. See Affached Exhibit - E, the Whole report. After MAKING NUMEROUS Attempts to have pictures to

My Injuries taken, Nurse Holwerda CAILED the Shift commander AND Asked him to send Someone over to the infirmary to takes pictures OF All injuries. After Waiting For two days For Someone to come And take pictures of the injuries, this plaintiFF SAW LieuteNANT Rispoli, in the infirmary And Asked him to contact the shift commander About taking pictures of the Muries. See Exhibit - F -After MAKING NUMEROUS UNSUCCESSFUL Attempts to have his damaged teeth fixed that were caused by the ASSAULT, this PlAINTIFF FIled Numerous grievances regarding proper CARE For his injuries. See Exhibit G. The inhouse grievance board devied the Plainfiffs grievance. So this Plaintiff Appealed the boards decision: After over two/s YEARS AND MANY Attempts to have this Matter rectified, The outside grievance committee granted this plaintiffs appeal and upheld his grievance request. See Exhibit -H These injuries Now require Surgery.

4. Defendant Carpenter - ASSAULT With A dangerous Weapon:

Defendant Carpenters AFFIDAVIT AND initial report is a complete lie AND FABRICATION. This CAN be proven through the testimony of the other officers that were ON the Scene When defendant CArpenter chose to Spray this plaintiff For Absolutely NO reason. The Afformey general's office was given the NAMES OF the other officers that witnessed this unprovoked ASSAULT, But chose to conveniently disregard the other officers Statements Simply because they would not support their lies. The officers must be given the opportunity to let the truth be KNOWN.

5. DeFendant Rispoli - Punitive damages:

These defendants claim that Rispoli couldn't have assaulted this Plaintiff on oct, 22² 2004 because he wasn't on duty in the infirmary. Defendant Rispoli is an area Cientenant and

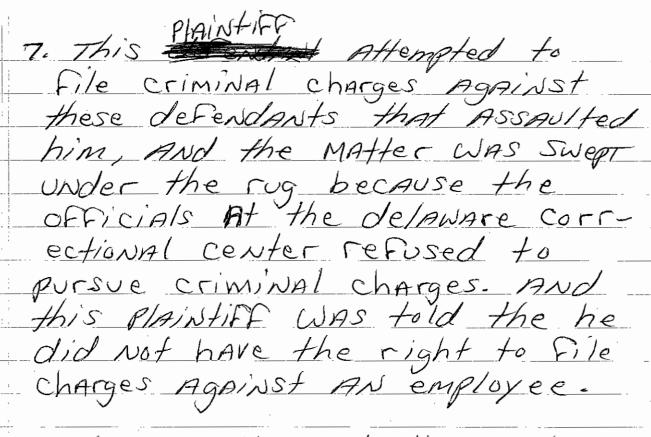
does not have Any Specific Station
For duty. During his shift he
goes wherever he wants whenever
he wants. So to even suggest
that Rispoli Could'nt have been there
because violet DUNN and DON overmeyer
were on duty, is just another
very weak attempt to manipulate
this court. Rispoli was not on
duty in the infirmary on october,
Il", 2004, but was still able to
have the conversation with this
plaintiff see Exhibit-G. once
Again, witnesses must be heard
For the truth to be known.

6. Defendant - Violet DUNN - ASSAULT With

A dangerous Weapon:

IN the defendants argument for Summary Judgement, they claim excessive Force. This is totally ridiculous. There was no excessive Force. The Actions of defendant Dunn was clearly assault with A dangerous weapon. There was absolutely no force neccessary, let Alone excessive Force. This

PAINTIFF WAS SOUND ASleep When this ASSAULT TOOK PLACE. This Plaintiff has been A chronic ASHMATIC his whole life AND takes ASTHMA MEdication daily. And these defendants has the Audacity to Suggest that this plaintiff sprayed himself. To be sprayed with Mace is Not A Pleasant experience For Someone who is Asthmatic. The reports AND testimony of the lieutenants, officers and Medical STAFF ON the Scene of this ASSAULT WILL SUPPORT the FACTUAL Allegations Made by this Plaintiff. AND For these defendants to Suggest that they are entitled to anytype of immunity is outrageous. IF ANY of these defendants is granted immunity
that would give any officer in
the department of correction free reign to ASSAULT INMATES Whenever they WANT to. The ACTIONS OF these defendants were in direct Violation of the United STAtes Constitution And criminal Acts.



8. Through Witness testimony this

Plaintiff CAN clearly prove that

he never resisted At Anytime,

And complied At All times

throughout every incident.

9. These defendants have a history of assaulting inmates while they are handcuffed and shackled.

And all of these facts can be proven.

10. This Plaintiff does Not have A history of ASSAULT OF ANYTYPE OF AGGRESSION ON STAFF OF ANYONE else Within the FACILITY. Therefore, this Plaintiff request that the defendants Motion For Summary Judgement be denied, And that this case be Scheduled For trial.

KEVIN C. BrAthwaite
1181 PADDOCK RD
SMYTNA DE19977

DATED, JUNE, 13th 2007

AFFICANIT

I Anthony J. Kellam States that the following Statement is being made under the Pains and Penalties of Berjury.

ON July, 1st 2002 While being housed in
The Security housing unit (S.H.V) in Bldg #17

Cell-B-U-12 I was physically Assaulted

by SgT. Wallace And SgT. Belanger After

being pen down to the floor and handcuffed

I was beaten on the left zide of my face

with a Roitshield after being beaten in

the face with the Roitshield sgT. Wallace

leaned down towards the floor where they

had me handcuffed and pened down and

sprayed me in the face with pepper spray.

I was also denied medical treatment.

7-20-05 Pathony 5, Kellan Gate Signature

Drandingon

Notary

EXhibit - A

Exhibit-B

AFFICHVIT

. I Myron Johnson States that the Following Statement is true and

Lubile I was housed in the Security housing unit (S.H.U) Building #17, SgT. Wallace physically assaulted me while I was handcuffed, by punching me in my Face numerous times.

Signature Signature

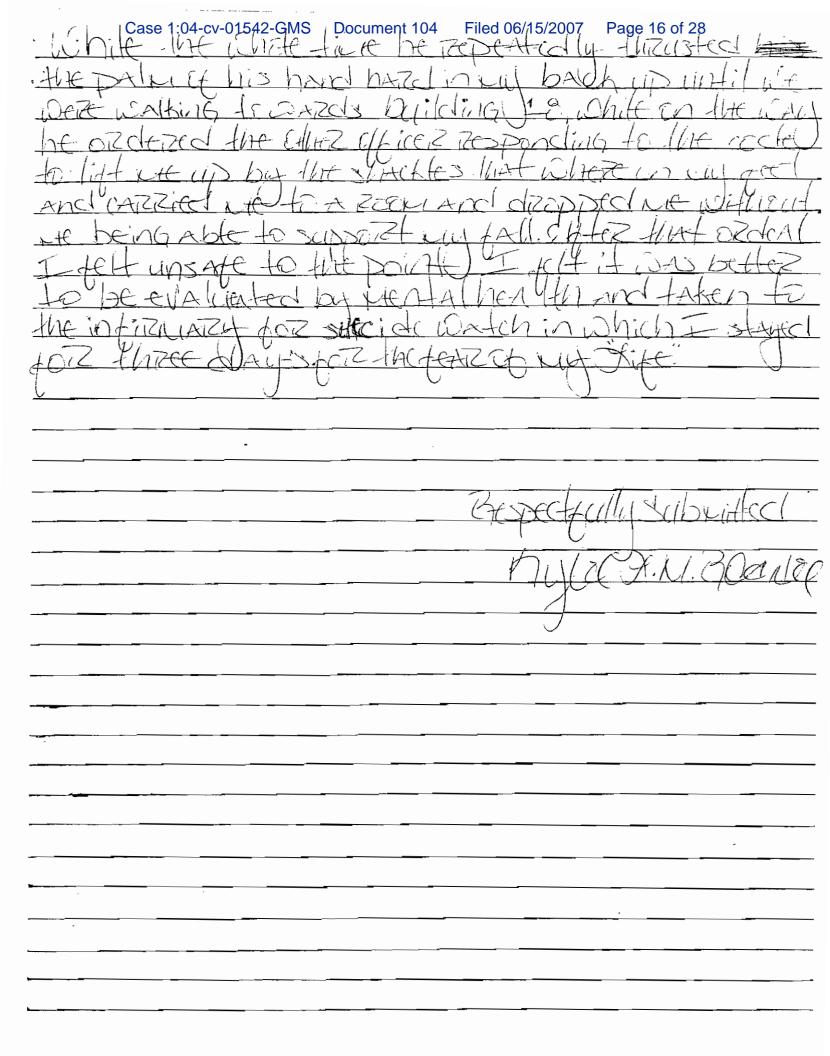
DAted ACROST 3 2005

Notady

EXhibit - C

Statement is true AND Correct.

5215,205 Shite FUE NEUXO TREOLD C-U-3 at - HE DOLAGIARE CORRECTION Was assautted by 3Gt. Tobert WALLACE. AT LARCE / HIGER / WHARLAN / HI JACKYO CALLE LOVE TOOK 1 tOTE A) Sha LICAS SEXTC-VILLOGI LE DECALISE ALTECUCIOLICET THE WEAR I of MAHER WHEN SET WALLACT WAS EN THE LIES down ht walt his wall-to ku coll 1824 shate do and steid seatch. White in LIN 200x 1 Set. 1011 CILLY IAGNE WHEN I ASKEY HILL WHO IT WAS TAKING IT he said because it didn't had a north on it when WAS CORING ELH Of the REDRIT FRIED FOR IN THE KINGINGE back usicle lite ROLLART the SILIDE PACT nishing in the inverte handbook stating beinez van NAGAZITES hat it dees states CAN hart HER Going back and to tak t MAGAZINE SOF WALLACT GRAFED X FORM into lue correrer of luc start trance to Avoid. While in the Dirocess of turning to avoid my fact being should into the trant of the door GE CADSPITALLED HE TELLING WELT THE ISHON while I was cuffed behind kut back any lizert at any live Culterlivelly rullands behind The shadked HE and DUSHECK My Declay agricust like becam to bord un hard in Exhibit-D





Infirmary Intake Form

Nursing Assessment Protocol

Use Progress Notes for Additional Documentation

Inmate Name: BRANTHWAITE, KEVIN	Date: 10/10/04 Time: 00/0		
Number: 315294 Date Of Birth: 5-27-62	Medications: See MAR		
Gender: M Facility: DCC	Medications: See MAR		
Allergies: MKDA	Medications: De MAR Appearance: No Distress Minimal Distress Acute Distress Attempt to Lang Le		
SUBJECTIVE: Chief Complaint: Drib pull	e, attempt to "hang" Se		
Symptoms:	yed Motor Response 🛛 Bleeding / Bruising Behind Ears		
OBJECTIVE: 149/9 Resp: 18 B/P: 199/9	8 Pulse Ox:WT: Finger Stick:		
	Mark and Describe on Diagram		
Head: Torso: Lichymans Extremities: Wounds Head: \$\Percent{Preserve}\$ Extremities: Noted Deformities Head: \text{Yorso:} Extremities: \text{Yorso:} Extremities: \text{Yorso:}	Mark and Describe on Diagram Legend AAbrasion BBruise CRaccoon's Eyes LLaceration RRash OOther:		
ASSESSMENT: □ Critical – Immediate Referral L	Local Emergency Department		
Stable - may house in infirma	ıry		
. Other:	-		
-	lwerda P Time: 10-10-04		

EXhibit-E



YFIRMARY/OBSERVATION PROGRESS NOTES

IME: Graithwarte, Levinnumber: 315294

E TIME \(\frac{1}{2}\) NOTES
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abrahims. Reposterior back i
noted ecchymosis noted, o
open areas noted. Vs. Will, neuro
H-alt in conflict / cosing skitts
P. maintain Tenel III and
monter Stolwerda /2
6900 B rempubul
E no 515 of distress roted.
@ Alterations in conflict / Coping skills level II.
Panhow to plans of que - Direbulle in
10450 5 "Would your please take a looked my injuries
and derite Hem down?"
D. Schler of left eye a blood wable Earlymon
noted on paterior tibea platerially area on Ptible
appreparately 3cm by 5cm (Dteben 3cm by 3cms.
Cochymosis note don upper back, Earlyness
on left buce measury approximately 5cm/kg
5cm. 1/4 states upon 2 text are losse states
- 3 lower teach are love. abrasans a swelling
noted on book upper and lower lip. 1/M Later
July all one.
1 Join
(Certinue & Rang care - Elles Montifer)
U



INFIRMARY/OBSERVATION PROGRESS NOTES

NAME: Braithweite Keoin NUMBER: 315294

DATE	TIME	NOTES	
Mulod	0615	D'Did you wellede the infunction about my	
	,	left your and right aim in your report "	
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		swollen compared to y dut the on right	
		apper arm has abrasion measuring approximately	
		Gem by tem.	
		a) alteratible in comput	
- , ,-	(P) Centinue & plan of care Medicale periff-Elledisto PN	
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		Do from 2 Nouses, also Meds out of Date	
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		I car Encurage compliance My com	-
1011			
10/11/	34	pt. seen + examince	
		From over a the stupt refusing to take BP	
	<u>.</u>	meds. Now pt in informany & refising to	
		have BP taken too.	
:		IM aid allow NSC to take BP while I was	
		present. BP= 165/101	
	-	Go-rib pain/soveness only.	
		Heart- MANOM lungs-CTA-6/L	
		Neck-opnuts Chest-Osided Fible 12 18	
		EXT-brysing QUE	
		Back-Pupper bruising superficial lac	
		Mouth - bottom lip snotten, brising	•
		AP: 1. SIP ORTIED - Pib pain, Brusing lingually	3
		2.4th uncontrolled roncompliar	
	- <	ABP med doses a freg Morrin PRN 1/2	7
		encourage pt to tate meds + be and all	
	/ (ant to monitor	

FORM #584



FACILITY: D.C.C.	DATE: 10-11-04			
GRIEVANT'S NAME LEVIN BRATHWAITE	SBI#: 315294			
CASE#: 8302	TIME OF INCIDENT: APPOOX: 500 P.M			
HOUSING UNIT: Medical UNIT				
BRIEFLY STATE THE REASON FOR THIS GRIEVANCE. GIVE DATES AND NAMES OF OTHERS INVOLVED IN THE INCIDENT OR ANY WITNESSES.				
LT. Rispoli that I Need to take pictures of	ximately 5° P.M. I told Yed him to contact Someone All of my bruises and Sustained as a result of Correction officers. To cay down and stop I do not feel safe that Assaulted me			
ACTION REQUESTED BY GRIEVANT: That AND AST THAT ALL OF M AND THAT I DO NO THESE OFFICERS WOR GRIEVANT'S SIGNATURE				
WAS AN INFORMAL RESOLUTION ACCEPTED?	(YES)(NO)			
(COMPLETE ONLY)	IF RESOLVED PRIOR TO HEARING)			
GRIEVANT'S SIGNATURE:	DATE:			
IE UNDESOUVED VOUADE ENTITLED TO A UEA	DING BY THE RESIDENT CRIEVANCE CORRECTIVE C			

EXhibit-F

cc: INSTITUTION FILE **GRIEVANT**

April '97 REV

RECEIVED

OCT 1 8 2004

Inmate Grievance Office

DATE RECEIVED BY MEDICAL UNIT:

NOTE: EMERGENCY MEDICAL CONDITIONS WILL TAKE PRIORITY. OTHERWISE. MEDICAL GRIEVANCES WILL BE ADDRESSED AT THE WEEKLY MEDICAL COMMITTEE MEETING.

JUN 2 2 2006

EXhibit-G

Inmate Grievance Office

DEPARTMENT OF CORRECTION
Bureau of Prisons
245 McKee Road
Dover, Delaware 19904

Mares 112] 3067007

17-BL-8

Inmate BRATHWAITE KEVIN C SBI # 00315294 DCC Delaware Correctional Center SMYRNA DE, 19977

Dear KEVIN BRATHWAITE:

We have reviewed your Grievance Case # 46948 dated 06/08/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney Bureau Chief

EXhibit-H

Case 1:04-cv-01542-GMS Document 104

Filed 06/15/2007

Page 23 of 28 Date: 03/13/2007

DCC Delaware Correctional Center Smyrna Landing Road **SMYRNA DE, 19977** Phone No. 302-653-9261

GRIEVANCE REPORT

OFFENDER GRIEVANCE INFORMATION

Offender Name: BRATHWAITE, KEVIN C

SBI# : 00315294 : DCC

Grievance # : 46948 Grievance Date : 06/08/2006

Institution

Category : Individual

Status

: Resolved

Resolution Status: Level 3

Resol. Date : 03/13/2007

Incident Date : 06/08/2006 Incident Time:

Grievance Type: Health Issue (Medical) : Merson, Lise M

Housing Location: Bldg 17, Lower, Tier B, Cell 8, Single

OFFENDER GRIEVANCE DETAILS

Description of Complaint: Inmate claims: My front teeth have developed an infection and the dentist told me that I need a

root canal which can only be approved by the DOC.

Remedy Requested

: That I be given a root canal to properly treat the infection in my teeth.

INDIVIDUALS INVOLVED

Type SBI# Name

ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance: YES

Date Received by Medical Unit: 06/20/2006

Investigation Sent: 06/20/2006

Investigation Sent To

Rodweller, Deborah

Grievance Amount:

Case 1:04-cv-01542-GMS

Document 104

Filed 06/15/2007

Page 24 of 28 Date: 03/13/2007

DCC Delaware Correctional Center Smyrna Landing Road **SMYRNA DE, 19977** Phone No. 302-653-9261

GRIEVANCE INFORMATION - Appeal

OFFENDER GRIEVANCE INFORMATION

Offender Name: BRATHWAITE, KEVIN C

SBI# : 00315294 : DCC

Grievance #

: 46948

Grievance Date : 06/08/2006

Category : Individual

Status : Resolved Resolution Status: Level 3

Inmate Status:

Grievance Type: Health Issue (Medical)

Incident Date : 06/08/2006 Incident Time:

Institution

: Merson, Lise M

Housing Location: Bldg 17, Lower, Tier B, Cell 8, Single

APPEAL REQUEST

Appeal received 14 November 2006.

Inmate states: The damage that was done to my front teeth is of no fault of mine. An infection has developed that requires a root canal. This problem has been ongoing since Oct., 9th 2004. the dentist told me that the only way I can get a root canal is if it gets approved by the DOC. The infection on my front teeth seems to be getting worse. So at this time I am requesting that my front teeth be repaired and that I get a root canal as soon as possible.

REMEDY REQUEST

Case 1:04-cv-01542-GMS Document 104 Filed 06/15/2007

DCC Delaware Correctional Center Smyrna Landing Road SMYRNA DE, 19977 Phone No. 302-653-9261 Page 25 of 28 Date: 03/13/2007

GRIEVANCE INFORMATION - BGO

OFFENDER GRIEVANCE INFORMATION

Offender Name: BRATHWAITE, KEVIN C SBI# : 00315294 Institution : DCC

Grievance # : 46948 Grievance Date : 06/08/2006 Category : Individual

Status: ResolvedResolution Status : Level 3Inmate Status :Grievance Type: Health Issue (Medical)Incident Date : 06/08/2006Incident Time :IGC : Merson, Lise MHousing Location : Bldg 17, Lower, Tier B, Cell 8, Single

REFERRED TO

Due Date: 12/05/2006 Referred to: Person Name: Welch, James

Type of Information Requested:

Grievant requests root canal & treatment for infection.

Response to Information Requested:

DECISION

Date Received: 11/1**7**/2006

Decision Date: 02/06/2007 Vote: Uphold

Comments

Grievant needs dental care (fillings and root canal).

AFFIDAVIT

I, GERRON LINDSEY, Cantruly State:

Internal Affairs Officer Joe Richardson is suggesting that I told him Inmate Kevin Brathwaite Sprayed himself with mace. This is untrue and cannot be substantiated by any recorded conversations or signed statements with Internal Affairsbyme. The Statement I gave Internal Affairs on the morning after the incident is what I Stand by.

I can truly state that, after the first conversation with Internal Affairs on the morning after the incident my Self and Internal Affairs never spoke any further about it. In fact, the one time I spoke with Internal Affairs (the morning after the incident) they recorded it and % Jeliff was present.

I can truly state that, the only other person who engaged in a conversation about the Situation was Deputy Attorney General Eileen during a deposition. She asked medid I and Kevin make a deal to lie for each other in which I stated no. And transcripts can verify that. I Standonmy Statement of Clo Dunn Spraying Kevin Brathwaite because I CLEARLY witnessed her do so.

EXHIBIT

GERRONLINDSEY

1181 Paddock Rd.

Smyrna, De 19977

NOTARY Brian N Englen

Notary Public, State of Delaware My Commission Expires June 14, 2008

Certificate o) <u>P</u> _	Serv	<u>lice</u>
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I Kevin C. Brathwaite States

that I have caused a copy of

the Attached, Motion to oppose

Summary Judgement and proceed

to trial, to be mailed to the

Following Party, by way of U.S.

postal Service.

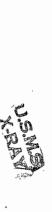
Ofhelia Waters, Esq Atty Gen Office 820 N. French St. Wilmington DE

> Kevin C. Brathwaite 1181 PAddock Rd. SMYCNA DE. 19977

DATEd: JUNE, 13th 2007

\$ 02.330 \$ 000498875 JUH 4 2007

DELAWARE CORRECTIONAL CENTER 1181 PADDOCK ROAD SMYRNA, DELAWARE 19977



NITED STATES DISTRICI COURT
OFFICE OF THE CLERK
844 N. KLASCE ST. LOCKBOX-1,

Allthathanananahantha